

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 867 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHARATKUMAR TRAMBAKLAL @ BABU-BHAI THAKKAR

Versus

PRESIDENT, JAMNAGAR AGRICULTURAL PRODUCTS &
PROCESSING CO-OPERATIVE SOCIETY LIMITED

Appearance:

None present for Petitioner

MR HARIN P RAVAL for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 03-03-97

C.A.V. JUDGEMENT

1. The petitioner, Manager of the respondent-Society, filed this Special Civil Application before this court and challenge has been made thereunder to the show-cause notice, annexure 'B', and the orders passed by the Second Joint Civil Judge, (S.D.), Jamnagar, dated 26-11-1982, in regular Civil Suit No.825/81 below Ex.5, and the order of the District Judge, Jamnagar, in

Civil Miscellaneous Appeal No.164/82 dated 7-2-1983 dismissing the appeal filed by the petitioner against the order of the Trial Court below Ex.5.

2. Under the second show-cause notice dated 16-11-1981, the petitioner was called upon to show cause why he should not be dismissed from the services. It is the case of the petitioner that the President of the Society under its oral order placed him under suspension on 30th August, 1981, without giving any reasons and without any prior approval of the Board and even without any prior sanction under sec.96 of the Act from the competent authority. In regular Civil Suit No.825/81 filed by the petitioner, he challenged both the order of the suspension as well as the second show-cause notice. Along with the civil suit, the petitioner filed an application Ex.5 for grant of temporary injunction. The prayer has been made by the petitioner for grant of temporary injunction not to dismiss the petitioner from services during the pendency of the suit. The learned Trial Court under its order dated 26-11-1982 declined to grant the ad-interim injunction in favour of the petitioner and application Ex.5 was dismissed. The Appellate Court has also declined to interfere with the order and hence this Special Civil Application.

3. The counsel for the petitioner is not present in the Court nor the petitioner has brought on record what ultimate decision has been taken by the respondent on the show-cause notice given to the petitioner. Interim relief in the present case was not granted so the respondents were not restrained from proceeding with the second show-cause notice. This petition has been filed in the year 1983 and by now the final order would have been passed in connection with the second show-cause notice given to the petitioner. It is the duty of the litigant to bring on record of the proceeding of the case, all subsequent events which have taken place after filing of the Special Civil Application. It is also the duty of the litigant to let know the court what grievance ultimately survives in the writ petition after 13 years of filing thereof. Precisely, it has not been done in the present case. Be that as it may. Otherwise also, this Special Civil Application is not maintainable.

4. The petitioner was given only a show-cause notice to show cause why he should not be dismissed from the services. It is not the case of the petitioner that the respondent was not competent to give the second show-cause notice. The writ petition against the show-cause notice is not maintainable because the

petitioner has sufficient opportunity to take all grounds against the show-cause notice as well as to produce the defence. The filing of this Special Civil Application directly against the show-cause notice should be discouraged, more so, when it pertains to the matter of disciplinary proceedings. In the disciplinary proceedings, the delinquent officer/employee has sufficient remedies available against the final order of the penalty made.

5. The Hon'ble Supreme Court in the case of SAKTI Through its Director, Rampachoda Varam vs. R.K. Ragala & Ors. reported in 1996(7) SCC 166 held that the intervention at the show-cause notice stage is illegal.

6. Reference may be made to another decision of the Hon'ble Supreme Court in the case of Executive Engineer, Bihar State Housing Board vs. Ramesh Kumar Singh reported in 1996(1) SCC 327. In para no.11 of the judgment, the Hon'ble Supreme Court held:

11. On the facts of this case, we hold that the first respondent was unjustified in invoking the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India, without first showing cause against Annexure Ext. P-4 before the third respondent. The appropriate procedure for the first respondent would have been to file his objections and place necessary materials before the third respondent and invite a decision as to whether the proceedings initiated by the third respondent under sec.59 of the Bihar State Housing Board Act, 1982, are justified and appropriate. The adjudication in that behalf necessarily involves disputed questions of fact which require investigation. In such a case, proceedings under Article 226 of the Constitution can hardly be an appropriate remedy. The High Court committed a grave error in entertaining the writ petition and in allowing the same by quashing Annexure Ext.P-4 and also the eviction proceedings No.6 of 1992, without proper and fair investigation of the basic facts. We are, therefore, constrained to set aside the judgment of the High Court of Patna in CWJC No.82 of 1993 dated 10-2-1993. We hereby do so. The appeal is allowed with costs.

So the challenge to the show-cause notice made by the petitioner in this Special Civil Application is not tenable.

7. So far as the challenge to the orders passed by the Civil Courts in civil suit are concerned, that too is also not maintainable.

8. Reference may have to two decisions of the Hon'ble Supreme Court in the case of Swetamber Jain Samiti vs. Alleged Committee of Management reported in JT 1996 (3) SC 21, and in the case of Durga Prasad vs. Naveenchandra & Ors. reported in JT 1996 (3) SC 564. Their Lordships of the Hon'ble Supreme Court held in those cases that the High Court should not permit its extraordinary jurisdiction under Article 226 of the Constitution of India to be converted into a civil court under ordinary law. Pending suit, the miscellaneous orders passed by the Trial Court or by the Appellate Court cannot be permitted to be challenged by way of writ petition under Article 226 of the Constitution of India.

9. The learned Trial Court has declined to grant ad-interim injunction to the petitioner below Ex.5 and that order has been affirmed by the Appellate Court. Challenge to those orders by this Special Civil Application is not maintainable.

10. Taking into consideration the totality of the facts of this case, this Special Civil Application is wholly misconceived and the same is dismissed. Rule discharged.

zgs/-